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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/537,539

06/03/2005

Bernard Paul Joseph Thiers

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BACON & THOMAS, PLLC

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EXAMINER

BUCKLE JR, JAMES J

ART UNIT

PAPER NUMBER

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/537,539	<b>Applicant(s)</b> THIERS ET AL.	
	<b>Examiner</b> JAMES J. BUCKLE JR	<b>Art Unit</b> 3633	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 11 June 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) 11-17, 24 and 25 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10, 18-23 and 26-34 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 June 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>06/03/2005</u> .  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Claims 11-17 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. After further consideration, the examiner has withdrawn claims 24 and 25 from examination for not being readable on the elected species. Applicant timely traversed the restriction (election) requirement in the reply filed on June 11, 2008.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.
3. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:
  1. Determining the scope and contents of the prior art.
  2. Ascertaining the differences between the prior art and the claims at issue.
  3. Resolving the level of ordinary skill in the pertinent art.
  4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
4. Claims 1-10, 23,26-29,32, and 34 are rejected under 35 U.S.C. 103(a) as being

unpatentable over Wasleff (U.S. Patent No. 1,787,027) in view of Moriau et al. (U.S. Patent No. 6,006,486).

5. Regarding claim 1, Wasleff discloses a floor covering (Fig. 1 and 2) comprising hard floor panels (10,11) that are provided with a coupling parts (12-16, 12a-16a) wherein the floor panels (10,11) are configured such that, in coupled condition, they appear as a herringbone pattern, wherein the sides (12-16, 12a-16a) of the floor panels (10,11) coincide with transition edges of the herringbone pattern. Wasleff does not distinctly disclose the floor panels being manufactured of a plate material. However, Moriau et al. teaches that it is known in the art to have a floor covering which is manufactured from a plate material such as HDF or MDF because very smooth surfaces and precise couplings can be obtained (col. 3, lines 26-43). Therefore, at the time the invention was made, it would have been obvious to one of ordinary skill in the art to have modified the floor covering disclosed by Wasleff with the material taught by Moriau et al. to have process floor panels that have a desired surface and optimum couplings.
6. Regarding claim 2, Wasleff discloses the floor panels that are provide with coupling parts on all sides. (Fig. 2)
7. Regarding claim 3, Wasleff discloses coupling parts on one or more sides of the panels (10, 11) that enable the panels to be coupled to other panels of the floor covering providing a locking in a horizontal direction in coupled condition of the floor panels. Wasleff does not distinctly disclose the coupling by means of a “downward dropping-in movement”. However, Moriau et al. teaches that it is

known in the art to have coupling by means of "downward dropping-in movement" (Fig. 3, 11, 24) as an alternative to any "snap-together" coupling means. Therefore, at the time of the invention, it would have been obvious to one of ordinary skill in the art to have coupled the panels as disclosed by Wasleff by the means of "downward dropping-in movement" as taught by Moriau et al. to avoid possible breaking of the coupling parts that may be caused by a "snap-together" means.

8. Regarding claim 4, Wasleff discloses coupling parts but does not distinctly disclose the coupling parts being configured to enable a locking in vertical as well as horizontal directions along all sides of the floor panels. However, Moriau et al. teaches that it is known in the art to have coupling parts configured to enable a locking in both a vertical and horizontal direction along all sides of the floor panels (Fig. 6 and 7) to ensure no movement occurs. Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to modify the coupling parts disclosed by Wasleff with the locking elements as taught by Moriau et al. to have a floor panels that are secured in place.
9. Regarding claim 5, Wasleff discloses a floor covering that is consist of floor panels that comprise at least two series of different floor panels (10, 11).
10. Regarding claim 6, Wasleff discloses a floor panels (10) of one of the two series

that form those parts of the herringbone pattern which extend in a first direction, and the floor panels (11) of the second series form those part of the herringbone pattern which extend in a second direction.

11. Regarding claim 7, Wasleff discloses a floor covering wherein the floor panels (10,11) are oblong and have short sides and long sides and the floor panels in coupled condition are disposed with their short sides coupled against the long sides of adjacent floor panels (10,11).
12. Regarding claim 8, Wasleff discloses a floor covering wherein the floor panels (10,11) of the first series as well as of the second series are provided at their opposed long sides with first coupling parts (12, 12a) and second coupling parts (13, 13a), respectively and at their opposed short sides the panels are provided with third and fourth coupling parts (14,15, 14a,15a); and further wherein the first and second coupling parts (12,12a,13,13a) of the floor panels (10,11) of the first series are complementary to each other; and the first and second coupling parts 912,12a,13,13a) of the floor panels of the second series are complementary to each other; the third and fourth coupling parts(14,.14a,15,15a)of the floor panels of the first series are complementary to the second and the first coupling parts (12,12a,13,13a), respectfully, of the floor panels of the second series; and the third and the fourth coupling parts (14,14a,15,15a) of the floor panels of the second series are complementary to the first and second coupling parts (12,12a,13,13a), respectively, of the first series.
13. Regarding claim 9, Wasleff discloses coupling parts (12-14,12a-14a) of the floor

panels (10, 11) "arranged successively".

14. Regarding claim 10, Wasleff discloses the floor panels (10,11) are rectangular.
15. Regarding claim 23, Wasleff discloses floor panels that coincide with one part of the herringbone pattern.
16. Regarding claim 26, Wasleff discloses coupling parts that lock the floor panels together without play.
17. Regarding claim 27, Wasleff discloses floor panels and coupling parts (Fig.2) that are formed of one piece. The Examiner considers the limitation "cut from one larger plate" to be a product by process limitation and therefore considers claim 27 a Product-by-process claim. "[E]ven though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." *In re Thorpe*, 777 F.2d 695, 698, 227 USPQ 964, 966.
18. Regarding claim 28, Wasleff in view of Moriau et al. further discloses floor panels that comprises hard panels configured such that , in combination with other floor panel, whether having another shape or not, a floor covering as set forth above can be formed.
19. Concerning method claim 29 in view of the structure disclosed by Wasleff in view

- of Moriau et al., the method of laying the panels would have been obvious, since it is the normal and logical manner in which the panels could be laid.
20. Concerning method claim 32 in view of the structure disclosed by Wasleff in view of Moriau et al., the method of manufacturing the panels would have been obvious, since it is the normal and logical manner in which the panels could be manufactured.
21. Regarding claim 34, Wasleff discloses a set of packaged floor panels with two series of different panels (10,11) adapted to form a herringbone pattern with both series being in the package.
22. Claims 18-20, 22,30 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wasleff (U.S. Patent No. 1,787,027) and Moriau et al. (U.S. Patent No. 6,006,486) as applied above, in further view of Marc et al. (FR 2,667,894).
23. Regarding claim 18, Wasleff and Moriau et al. discloses a floor covering as set forth above the consist of floor panels with opposed sides with coupling parts but does not disclose opposed sides with non-complementary type coupling parts. However, Marc et al. teaches in Fig. 1 that it is well known in the art to have a pair of opposed sides with coupling parts of a similar non-complementary type as a common design choice and as an alternative way to manufacture floor panels that are capable of a herringbone pattern. It would have been obvious to one of ordinary skill in the art to modify the floor covering disclosed by Wasleff and



Art Unit: 3633

Moriau et al. with the design as taught by Marc et al. to have better design alternative to manufacturing floor panels.

24. Regarding claim 19, Marc et al. further discloses floor panels where the remaining pairs of opposed sides have complementary coupling parts.
25. Regarding claim 20, Marc et al. further discloses floor panels of each of both series, per series comprises coupling parts of the same type at three adjoining successive sides of the panels wherein the coupling parts at the three successive sides of the panels of the first series are complementary to the coupling parts at the three successive sides for the panels of the second series. (Fig. 1 and 3)
26. Regarding claim 22, Marc et al. further discloses floor panels that are rectangular and oblong and in that the opposite sides with the non-complementary coupling parts are formed by the short sides.
27. Concerning method claim 30 in view of the structure disclosed by Wasleff and of Moriau et al. in view of Marc et al., the method of laying the panels would have been obvious, since it is the normal and logical manner in which the panels could be laid.
28. Concerning method claim 33 in view of the structure disclosed by Wasleff and of Moriau et al. in view of Marc et al., the method of manufacturing the panels would have been obvious, since it is the normal and logical manner in which the panels could be manufactured.
29. Claims 21 and 31 is rejected under 35 U.S.C. 103(a) as being unpatentable over

Wasleff (U.S. Patent No. 1,787,027) and Moriau et al. (U.S. Patent No. 6,006,486) and Marc et al. (FR 2,667,894) as applied above, in further view of Fulton (U.S. Patent No. 1,622,104).

30. Regarding claim 21, Wasleff, Moriau and Marc et al. further disclose floor panels that are rectangular and oblong and in that the opposite sides with the non-complementary coupling parts, but does not disclose non-complementary coupling parts that are formed by the long sides. However, Fulton teaches that it is known in the art to have non-complementary parts by the long sides (Fig. 3, Item 8) as alternative and efficient way to manufacture floor panels. It would have been obvious to one of ordinary skill in the art, at the time the invention was made to have modified the floor panels of Wasleff, Moriau and Marc et al. to have floor panels that has opposed non-complementary coupling parts by the long sides as an efficient alternative to producing floor panels.
31. Concerning method claim 31 in view of the structure disclosed by Wasleff, Moriau et al. and Marc et al. in view of Fulton, the method of laying the panels would have been obvious, since it is the normal and logical manner in which the panels could be laid.

### ***Conclusion***

32. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Art Unit: 3633

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JAMES J. BUCKLE JR whose telephone number is (571)270-3739. The examiner can normally be reached on Monday-Thursday, Alternating Friday 7:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Glessner can be reached on 571-272-6843. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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JJB

/Brian E. Glessner/

Application/Control Number: 10/537,539

Page 11

Art Unit: 3633

Supervisory Patent Examiner, Art Unit 3633